Seng Kim Huat & Anor v Rasamutu Sdn Bhd (in liquidation) & Ors

HIGH COURT (SANDAKAN) — COMPANY WINDING UP NO SDK-28–1/1 OF 2012
MAIRIN IDANG JC
24 FEBRUARY 2018

Companies and Corporations — Winding up — Injunction — First respondent wound up — Liquidator appointed — First respondent was the registered sub leasee of titles land — Second respondent held titles — Second respondent refused to hand over titles to liquidator — Petitioner applied for injunctions for second respondent to deliver titles of land — Companies Act 1965 s 368A(1)(a) & (4)

Rasamutu Sdn Bhd ('the first respondent') was wound up on 6 June 2016 and consequently, Mr Chin Wei Teck ('Mr Chin') was appointed as the liquidator for the first respondent. Mr Chin and the official receiver had requested for the second respondent to deliver the 208 native titles ('the titles') and other documents pertaining to the subleases of the titles, but the second respondent had not complied. Hence, the petitioner had filed the present application ('encl 425') for the orders, inter alia: (a) an injunction that the second respondent do deliver to the official receiver or any court appointed liquidator the 208 subleases over the titles as particularised in the Schedule hereto within three days of the date of this order; (b) an injunction that the second respondent do deliver to the official receiver or any court appointed liquidator the titles as particularised in the Schedule hereto within three days of the date of this order; and (c) an injunction that the second respondent do deliver to the official receiver or any court appointed liquidator the duplicate charges and the duly executed discharges and the duly discharge of charge over the titles as particularised in the Schedule hereto within three days of the date of this order. The present application was made under s 368A(1)(a) and (4) of the Companies Act 1965.

Held:

(1) Any interested parties were at liberty to file an action to declare void all those dealings involving the titles. But none had done so far. Since the first respondent had been wound up and liquidators had been appointed and since the first respondent was still the registered subleasee of the titles and all these titles were kept by the second respondent and since he refused to hand over the same to the liquidators, such application ought

to be allowed so that the liquidators could do their jobs as required under the law expeditiously. Moreover, the liquidators had also supported this application (see paras 9–10).

[Bahasa Malaysia summary

Rasamutu Sdn Bhd ('responden pertama') telah digulungkan pada 6 Jun 2016 dan kemudian, Mr Chin Wei Teck ('Mr Chin') telah dilantik sebagai pelikuidasi untuk responden pertama. Mr Chin dan pegawai penerima telah meminta agar responden kedua menyerahkan 208 hak milik asli ('hak milik tersebut') dan dokumen lain berkaitan sewaan kecil hak milik tersebut, tetapi responden kedua tidak mematuhinya. Justeru, pempetisyen telah memfailkan permohonan ini ('lampiran 425') untuk perintah-perintah, antara lain: (a) suatu injunksi agar responden kedua menyerahkan kepada pegawai penerima atau mana-mana pelikuidasi yang dilantik oleh mahkamah 208 sewaan kecil ke atas hak milik tersebut yang dinyatakan dalam Jadual iaitu dalam tempoh tiga hari dari tarikh perintah ini; (b) suatu injunksi agar responden kedua menyerahkan kepada pegawai penerima atau mana-mana pelikuidasi yang dilantik oleh mahkamah hak milik tersebut yang dinyatakan dalam Jadual iaitu dalam tempoh tiga hari dari tarikh perintah ini; dan (c) suatu injunksi agar responden kedua menyerahkan kepada pegawai penerima atau mana-mana pelikuidasi yang dilantik oleh mahkamah pendua pertuduhan itu dan pelepasan yang telah dilaksanakan dengan sewajarnya dan pelepasan pertuduhan yang dikenakan ke atas hak milik tersebut yang dinyatakan dalam Jadual iaitu dalam tempoh tiga hari dari tarikh perintah ini. Permohonan ini dibuat di bawah s 368A(1)(a) dan (4) Akta Syarikat 1965.

Diputuskan:

(1) Mana-mana pihak yang berkepentingan bebas untuk memfailkan tindakan bagi mengisytiharkan semua urusan yang melibatkan hak milik tersebut adalah tidak sah. Namun tiada yang berbuat sedemikian. Oleh kerana responden pertama telah digulungkan dan pelikuidasi telahpun dilantik dan memandangkan responden pertama masih penyewa kecil berdaftar berhubung hak milik tersebut dan kesemua hak milik tersebut disimpan oleh responden kedua dan oleh kerana dia enggan menyerahkan yang sama kepada pelikuidasi, maka permohonan tersebut patut dibenarkan agar pelikudasi boleh melaksanakan tugas yang dikehendaki di bawah undang-undang dengan segera. Tambahan pula, pelikuidasi juga telah menyokong permohonan ini (lihat perenggan 9–10).]

Notes

For cases on winding up in general, see 3(1) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 1336–2146.

Cases referred to

Malayan Banking Bhd v Neway Development Sdn Bhd & Ors [2017] 5 MLJ 180; [2017] 9 CLJ 401, FC (refd)

Perbadanan Kemajuan Pertanian Selangor v Megafores Nursery Sdn Bhd & Ors [2010] MLJU 1572; [2011] 8 CLJ 484, HC (refd)

Legislation referred to

Companies Act 1965 ss 221, 368A(1)(a), (4)
Contracts Act 1950 s 24
Land Ordinance (Cap 81) ss 17, 64

Norbert Yapp (Norbert Yapp & Assoc) for the petitioner.
Catherine Chaw (Catherine Chaw & Assoc) for the first respondent.
Serena Liew (Serena Liew & Assoc) for the second to fifth respondents.

Mairin Idang JC:

[1] His Lordship Datuk Douglas Cristo Primus Sikayun (as he then was), had wound up Ria Realti Sdn Bhd ('Ria Realiti') on the 15 April 2016, then Rasmutu Sdn Bhd ('Rasamutu') on the 6 June 2016. In his ruling in respect of Rasamutu, His Lordship had adopted the same reasoning when winding up Ria Realti. Mr Chin Wei Teck was appointed the liquidator for Rasamutu. Mr Chin Wei Teck resigned and was replaced by the official receiver. Mr Shanmughanathan a/l Vellanthurai is now the liquidator. An important aspect of the duties of a liquidator is to recover debts and properties due to the company as well as to assert its rights. Apparently there were requests from Mr Chin Wei Teck and the official receiver for the second respondent to deliver the 208 native titles and other documents pertaining to the subleases of the 208 native titles but the second respondent had not complied. The 208 native titles consisted of 2,693.44 acres of oil palm estate land which was valued at RM58,940,000 as of 27 March 2014. In 2017 the value could be more.

[2] Hence, this application (encl 425) by the petitioners for the following orders:

(a) an injunction that the second respondent Wong Kien Ching do deliver to the official receiver or any court appointed liquidator the 208 subleases over the 208 freehold native titles as particularised in the Schedule hereto within three days of the date of this order;

(b) an injunction that the second respondent Wong Kien Ching do deliver to the official receiver or any court appointed liquidator the 208 freehold native titles as particularised in the Schedule hereto within three days of the date of this order;

(c) an injunction that the second respondent Wong Kien Ching do deliver to the official receiver or any court appointed liquidator the duplicate charges and the duly executed discharges and the duly discharge of charge over the 208 freehold native titles as particularised in the Schedule hereto within three days of the date of this order;

(d) the costs of this application be paid to the petitioners by the second respondent Wong Kien Ching;

(e) that there be liberty to apply; and

(f) such further order and or relief as this honourable court may deem fit to grant.

[3] This application is made under s 368A(1)(a) and (4) of the Companies Act 1965:

> (1) Where a person has engaged or intends to engage in conduct that constituted, constitutes or would constitute —
>
> (a) Contravention of this Act;
>
> The Court may, on application of the Registrar or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, requiring the first mentioned person to do that act or thing.
>
> (4) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised whether or not —
>
> (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
>
> (b) the person has previously refused or failed to do that act or thing; or
>
> (c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

[4] The following are the affidavits filed herein:

The petitioners:

(a) the affidavit in support of Seng Kim Huat (encl 423); and

(b) the affidavit in reply of Tan Boo Seng (encl 430).

The second respondent:

(a) the affidavit in opposition of Wong Kien Ching (encl 426);

(b) the affidavit in reply of Wong Kien Ching (encl 456); and

(c) the affidavit in reply of Wong Kien Ching (encl 478).

Other affidavits:

(a) the affidavit of Khoo Seng Peng (encl 450); and

(b) the affidavit of Shanmughanathan a/l Vellanthurai, the liquidator (encl 468).

[5] The following are the submissions:

(a) the petitioners' written submission (encl 452);

(b) the second respondent's written submission (encl 448);

(c) the petitioners' further written submission (encl 459); and

(d) the second respondent's supplemental written submission (encl 461).

[6] The second respondent opposed this application and submitted 'In order to determine if section 368A(1)(a) of the Companies Act is applicable, it would be necessary to first determine if Rasamutu Sdn Bhd (in liquidation) is entitled to the said 208 Native Title (NT) lands and subleases in the light of this Honourable Court's ruling that the Tripartite Sale and Purchase Agreement for the sale of the NT lands and the subleases to a Non-Native (Rasamutu Sdn Bhd (in liquidation) to circumvent the SLO is illegal'. But the petitioners submitted 'The learned judge did not set aside the VOID titles. The subleases and freehold titles registered in Rasamutu Sdn Bhd's name and Wong Kien Ching's name respectively were LIABLE to be set aside, but were not set aside/cancelled by the Learned Judge. His Lordship left it to another forum to deal with the consequence of void title'.

[7] When His Lordship ordered the winding up of Ria Realti, he said this: 'Having read the submission by Miss Pearl Lee counsel for the Public Bank Berhad particularly on Section 221 of the Companies Act 1965 and the cited authorities, *I shall not deal with the consequential orders sought for* but instead confine myself to the issue of illegality vis a vis contravention of Section 17 and Section 64 of the Land Ordinance and the effect of Section 24 of the Contracts Act 1950. And if illegality is proven whether it is just and equitable to wind up the company and/or whether the substratum, of the Company is gone'. (line 49 to 56 pp (2)–(3) Company Winding Up Petition SDK-28–2/1 of 2012). His Lordship then wound up both Ria Realti and Rasamutu under the just and equitable ground due to illegality. He had referred to *Perbadanan Kemajuan Pertanian Selangor v Megafores Nursery Sdn Bhd & Ors* [2010] MLJU 1572; [2011] 8 CLJ 484. (Emphasis added.)

[8] Thus His Lordship had spoken very clearly that because of illegality, it

was just and equitable to wound up Rasamutu but he did not make any consequential orders to declare whatever dealings that were registered on the 208 native titles. He was also reminded by Ms Pearl Lee (counsel for Public Bank Bhd) particularly on s 221 of the Companies Act 1965, which was only to wound up Rasamutu. But what then should a court do when confronted with a situation where the company had been wound up but has a property subleased to it. The petitioners submitted '… that as long as the titles remain so registered on the register of titles and unexpunged therefrom, the ONLY party which has the right to physical possession of the land and to the physical possession of the documentary titles to the land is the liquidator'.

[9] Let us read those cases referred to by both parties whether they are of any assistance. Those cases deal with illegality and of course the latest Federal Court's decision of *Malayan Banking Berhad v Neway Development Sdn Bhd & Ors* [2017] 5 MLJ 180; [2017] 9 CLJ 401 spoke volume of the effect of illegality and the implication on the position of the second respondent's as the native nominee who became the registered owners of the 208 native titles. But all these cases referred to are not dealing with illegality as a basis to wind up a company where the winding up court under s 221 of the Companies Act 1965 could not order any consequential orders to void the transfer of the said 208 native titles to the second respondent or the subleases registered with Rasamutu or the banking charges. The petitioners submitted 'The fate of the estate lands and the documentary titles pertaining to them have to be determined in another forum'. I am also of the view that any interested parties are at liberty to file an action to declare void all those dealings involving the 208 native titles. But none has done so far.

[10] Since the Rasamutu had been wound up and liquidators have been appointed and since the Rasamutu is still the registered subleasee of the 208 native titles and all these titles are kept by the second respondent and since he refused to hand over the same to the liquidators, such application ought to be allowed so that the liquidators could do their jobs as required under the law expeditiously. The liquidators had also supported this application. I therefore make an order in terms of encl 425. Cost of RM5,000 to the petitioner.

Order accordingly.

Reported by Dzulqarnain Ab Fatar